

EMPLOYMENT WORK STATUS DETERMINATION

INTRODUCTION

Many businesses feel that the law is very unclear and confusing regarding classification of workers as employees or independent contractors. This sometimes leads to costly audit assessments for unreported wages when employees have been misclassified as independent contractors. In partnership with the Small Business Employer Advisory Committee, the Employment Development Department (EDD) has developed the Employee Determination Guide (DE 38), and its "Worksheet on Employment Status." The worksheet can be used by business entities in determining whether a worker is most likely an employee or an independent contractor. The DE 38 also includes examples of independent contractors and common law employees.

HOW TO REQUEST A DE 38

If you would like to request a DE 38, please call your local Employment Tax Customer Service Office (ETCSO). You can find the number to your local ETCSO in the white pages, under Government Listings - State Government Offices - Employment Development Department - Payroll Tax Information or Employment Tax Customer Service Office. You can also find the number of your local ETCSO, or view and download a DE 38 and other EDD forms on the Internet at: www.edd.ca.gov

EDD RULING

If after completing the DE 38 you remain unsure of how to classify your workers, you may request a written determination. The determination will be issued in the form of an EDD ruling letter.

An EDD ruling letter is a written determination issued to businesses or prospective businesses, which hire, or plan to hire workers, that interprets and applies the California Unemployment Insurance Code. The purpose of a ruling letter is to provide a written record of the working relationship and the Department's determination on whether the worker is an employee or independent contractor. This is a formal document which may be used to resolve future issues.

A written determination is based upon the facts presented. If the facts change during the course of the working relationship, the determination is no longer valid

and you will need to contact EDD for a new ruling. In addition, if there have been facts which were omitted or misrepresented, the determination made by EDD is not valid and will not be binding upon the Department.

HOW TO REQUEST A RULING

If you would like to request a written determination, you should contact your local ETCSO for a Determination of Employment Work Status, DE 1870, **or download the form on the Internet at: www.edd.ca.gov** This form should be completed for one individual who is representative of the class of workers whose status is in question. If a written determination is desired for more than one class of workers, a separate DE 1870 should be completed for each class. If you previously completed an Internal Revenue Service Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding form (SS-8), you can mail us a copy of the SS-8 with any related attachments instead of completing a DE 1870 form. All completed forms should be mailed to:

State of California
Employment Development Department
Audit Section, MIC 94
P.O. Box 826880
Sacramento, CA 94280-0001

PROCESS

Upon receiving your completed form and any applicable attachments, EDD will analyze the information received. A Department representative may contact you or some of your workers if further clarification is needed. The Department will respond with a written determination within 60 days of receiving your request.

QUESTIONS

For more information regarding this service, please contact your local ETCSO. The ETCSO's can also provide you with verbal guidance on employee or independent contractor determinations, general information sheets on various classes of employment tax seminars, or provide you with information regarding upcoming employment tax seminars. Whether you are a new or established business, we are here to help you to succeed in today's competitive economy.

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.